

E F F E C T I V E
JUNE 27, 1986
NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

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NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
OAL DOCKET NO. BDS 09923-83

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	Administrative Action
	:	
ANDREW M. RODGERS, D.C.	:	PROPOSED ORDER CONTINUING SUSPENSION
	:	FOR FAILURE TO COMPLY WITH PROBATION
	:	REQUIREMENTS
TO PRACTICE CHIROPRACTIC IN THE	:	
STATE OF NEW JERSEY	:	

This matter was presented to the Board by way of status conference with Dr. Rodgers as required by the Board Order filed July 1, 1985. That Order required his appearance to determine his eligibility for stay of the remainder of the three-year suspension of license previously imposed by the Board after trial of a disciplinary Complaint filed by the Attorney General. The terms of the final Order, which resulted in imposition of various sanctions including suspension of license, are summarized below.

Dr. Rodgers was found to have submitted insurance claim forms billing for services not rendered, in violation of N.J.S.A. 45:1-21(b), (e) and (h), and N.J.A.C. 13:35-6.4. This was deemed a failure of good moral character in violation of N.J.S.A. 45:9-41.5. Regarding numerous findings of x-ray films billed but not produced, he was found to be repeatedly negligent in that he failed to

supervise the preparation of billing statements by his office staff. The same finding was made regarding serious inadequacies in his preparation of patient records in that he failed to provide an appropriate record of chiropractic care provided, as well as failing to corroborate that x-rays for which he billed had even been taken. These matters were found to constitute violations of N.J.A.C. 13:35-6.5, N.J.S.A. 45:1-21(d), (e) and (h). Other problems were found regarding Dr. Rodgers' professional abilities regarding x-ray knowledge and technique, in that 50%-60% of films reviewed were found to be non-diagnostic, constituting gross negligence, N.J.S.A. 45:1-21(c), because of the consequent unnecessary and unwarranted exposure of patients to radiation. Dr. Rodgers also engaged in misrepresentation and professional misconduct by his dissemination of a pamphlet entitled "Recommendations for Chiropractic Care" published by the Parker Chiropractic Research Foundation because it misrepresents the purpose and applicability of chiropractic care. Rodgers was further criticized for professional misconduct, N.J.S.A. 45:1-21(e), in prescribing and selling vitamins to a patient as this is outside of the scope of chiropractic practice in this State.

Disciplinary sanctions imposed for the above violations included assessment of civil penalties of \$11,500 and costs of \$4,764.67, totalling \$16,264.67. He was required to successfully complete two courses in x-ray technique and positioning, a course in chiropractic analysis and a course in office management at a recognized school of chiropractic approved by the Board. Further,

his license was ordered suspended for three years. The Order required that the first year be an active suspension but permitted the remaining two years to be stayed as a period of probation "if all other terms of the within Order are met." Those terms included compliance with an incorporated document entitled Future Activities of Medical Board Licensee Who Has Been Disciplined. The Order required Rodgers to appear before a Board Committee for a status conference prior to the end of the definite active suspension period and particularly noted:

Failure of the respondent to comply with the terms of this order shall constitute grounds for the imposition of additional disciplinary sanctions against him including, but not limited to, a vacation of the stay of suspension or revocation of his license to practice chiropractic.

Among other specifics, that document prohibited him from occupying, sharing or using office space in which another licensee practices the profession; from giving an opinion or advice as to the professional practice or its application; or from conveying to the public in any way the impression that he was still authorized to practice or from using any sign indicating entitlement to practice. He was expressly directed to remove any such sign. He was further expressly prohibited from sharing in any fee for professional services performed by any other professional. In fact, Dr. Rodgers filed with the Board an affidavit attesting to compliance with all parts of this document.

Notwithstanding these sworn assurances, information is now before the Board which indicates that Dr. Rodgers never

actually relinquished control of his office, called "Morristown Chiropractic Center" and hired several chiropractors to work there during the time of his active suspension. A number of serious allegations have been made by one or more of those practitioners including the following:

- (1) Dr. Rodgers directed the practicing chiropractor on how the office (i.e. Rodgers' office) was to be run including the scheduling of patients and preparation of office records. He regularly conducted "staff conferences" there.
- (2) He urged that patients be routinely scheduled for a large number of visits up to a month in advance without considering the actual need of the individual patient or the response to treatment, and to affirmatively contact those patients if they failed to comply with the appointment calendar so set, emphasizing to the staff the need to bring in office revenue.
- (3) The practitioners on the premises, inquiring about financial matters there, were informed that finances were none of their concern and they were not to know about them.
- (4) Patients were directed in accordance with Rodgers' instructions to make their payments to "Morristown Chiropractic Center" (wholly owned by Rodgers personally) rather than to the practitioners who were in fact rendering the professional services as so-called

independent contractors" on the premises. The only exceptions to this arrangement appear to have been the result of insistence by a practitioner that some of the checks be made payable to him, in order to reduce the probability of receiving no pay at all -- a topic addressed here later. All other patient fees were allegedly deposited into the account for the "Center," of which Rodgers was the sole shareholder. From this account, Rodgers allegedly paid for office overhead, staff salaries or other uses as he chose, utilizing the remainder at his discretion including the payment of his personal residence rent.

- (5) These hired practitioners were paid not by the patients they treated but by "Morristown Chiropractic Center." They did not keep the fees and maintain the office from the gross revenues; instead they received only a portion of the fees and generally were kept ignorant of the actual fees paid by the patient. At least one practitioner was paid by a percentage of the gross revenue. These paychecks frequently were uncashable at the bank due to insufficient funds. As a result of these experiences, Rodgers directed that the paychecks issued in the name of the practitioner not be given to that person but were to be cashed by Rodgers or his agents and only the cash given out. In these instances, the payee did not even see the check in advance.

- (6) On one occasion, a practitioner discovered by chance that his name had been written as an endorsement on the back of his paycheck, not by him and without his knowledge or permission. This check was delivered by Rodgers to the practitioner at the demand of the latter, and was discovered to be uncashable. It is now in the custody of Attorney General.
- (7) Until the unscheduled visit to the office by an investigator from the Board's Enforcement Bureau on September 11, 1985 Dr. Rodgers' name or copy of license was still being displayed in the office, and Rodgers was there regularly on Mondays, Tuesdays and Wednesdays actively involved in billing matters and in verbal contact with the patients.
- (8) Upon learning that one of the hired practitioners had been interviewed by the Investigator, one of Rodgers' prior attorneys contacted the practitioner and, on behalf of Rodgers, prohibited the practitioner from any further discussion with the Investigator and, indeed, instructed the practitioner to "throw him out" if he returned.

Dr. Rodgers, asked about these matters at the status conference, admitted being on the premises but insisted it was only occasional and usually during lunch hour, and solely to collect any mail and "accounts receivable" due to him for services rendered prior to his active suspension (which had commenced July 1, 1985).

He vigorously denied any intervention whatsoever in the management of the office but later acknowledged that he felt compelled to direct the other practitioners because they were "young" and "didn't know how to manage" and he was concerned that they might do things which would cause a loss of the clients Rodgers wished to continue at that office in anticipation of his resumption of practice and he also wished to maximize the income production from the office during the interim. He at first insisted that all revenues were utilized solely to maintain the office as an ongoing practice, but then acknowledged that he had used some of the revenue to pay his personal rent; this diversion of professional income earned by others was apparently because he never attempted to develop any other source of gainful employment for himself after his license was suspended. He acknowledged endorsing the name of the payee on office paychecks preparatory to cashing the check and insisted that the payee was aware of this and had no objection.

The information made available to the Board about respondent's conduct during the suspension period includes a number of peculiar circumstances. Those listed herein are considered the most significant and we base our proposed determination on them. We have carefully considered the question of Rodgers' compliance with the terms of the Final Order and can come to no conclusion other than that he appears to have woefully failed to grasp his responsibilities in this regard. As the Order staying a portion of the active suspension was expressly conditioned on his compliance with those terms, we propose to find that he has not earned

the stay of more than a portion of the suspension period. For good cause shown,

IT IS on this 23rd day of June, 1986,

ORDERED that respondent shall be permitted to submit in writing and within 30 days of receipt of this proposed Order: a detailed indication of such factual assertions in the proposed Order as respondent believes to be in error. The Board shall study the response and, if received by July 1, 1986 shall determine at the July 9 meeting (or, if received thereafter, at the August 13, 1986 meeting) whether there are sufficient and genuine issues as to material fact asserted in the proposed Order. At that point the Board will determine if an evidentiary hearing is necessary and the proper nature and scope of such a proceeding which may not necessarily be limited to the charges hitherto discussed or the penalties hitherto proposed. If no timely and appropriate response is received, it is further

ORDERED that respondent's license shall remain actively suspended until December 31, 1986 and, upon demonstration of compliance with all terms of the original Order, the remainder of the three-year suspension shall be stayed and become a period of probation. He is assessed an additional penalty of \$2500 for the violations of the prior Order found herein and the additional costs of \$1,870.65 incurred in the investigation of his conduct during the recent active suspension period. He shall be permitted to continue the prior arrangement of paying all penalties plus costs in monthly installments as arranged with the Board office, but the

new costs assessment must be paid prior to the start of the period deemed to be probationary. Any further violation of the original Order or of this Supplemental Order shall render respondent liable to total revocation of license.

THIS ORDER IS EFFECTIVE UPON PERSONAL SERVICE ON RESPONDENT OR HIS ATTORNEY.

STATE BOARD OF MEDICAL EXAMINERS

By Edward W. Luka MD
Edward W. Luka, M.D.
President